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LEGISLATIVE ANTAGONISM TO ETHICAL PRINCIPLES.

STEPHEN H. ALLEN.

IN EVERY nation having a well established government and code of laws there is some underlying false doctrine on which the unmerited privileges of the dominant person or class are based, some law or creed conferring power, privilege and eminence without regard to merit. All new legislation is keyed to accord with the basic doctrine and the more vicious the doctrine the less toleration of criticism of it. The autocrat rules under a claim of God-given right, which he supports by priestly teachings, military force and police surveillance. The laws he promulgates are designed to fortify, rather than overthrow, his false claims. They may promote moral improvement among his subjects and just dealings and relations between them, but the false principles of autocracy are adhered to. If the priestly order is looked to as the main support of despotic power, all legislation must be in accord with its religious dogmas and church requirements. In constitutional monarchies having orders of hereditary nobility sharing in the legislative functions, new laws must tend to preserve, not overthrow, the established orders. Self-preservation is the first law of rulers of all kinds. Where slavery exists the slaveholders are always a powerful and usually a dominant element in the state and all legislation must be framed to preserve the power of the masters.

All well established states have land laws which secure to a part of the people dominion over all the land. The landowners dominate in legislative assemblies in inverse proportion to their numbers, the less the whole number of them the greater their power. Except in times of revolution, new legislation is keyed to the fundamental theories which give to the landholders their artificial paper titles

to the face of the earth. Wealth in every form gives power and prominence to its possessor, but possession ends with life. To extend the rich man's influence the laws of wills, descent and distribution of property give to his donees and descendants his accumulations without regard to need or merit. In the most democratic of countries the landholders and other men of wealth influence, and often dominate, the legislative bodies. New laws relating to land tenure and inheritance must not undermine the existing system on which the privileges of the social leaders are based.

It is axiomatic that human legislators do not make ethical principles. They do marvelously well when they find and apply them to human affairs. In the work of legislative bodies, relatively little attention is paid to the formulation of permanent rules of conduct or right based on conceptions of moral principles governing the subject. By far the greater part of the legislators' work is to devise and formulate expedients, more or less temporary in character, to accomplish some purpose he deems desirable. The government itself, whatever its form and character, is a mere expedient, foredoomed to change and destruction. A legislative expedient may be genuinely public, partial for the special advantage of the legislator himself, his personal friends, his immediate constituents, or a company or class of persons. So great is the number of bills introduced in the legislative body, elected for a state or nation, dealing with such expedients, and so intense is the interest in the measures that promise personal, party, local and class advantage that it is difficult to arouse interest in or obtain consideration of any bill designed to be a permanent guide in the application of ethical principles to human relations. Only in times of excitement and political upheaval do fundamental principles of right and justice gain much consideration and then it is often but one particular question that is considered, disconnected from other vital matters of equal or greater importance.

The relations of nations to each other have been gov-

erned throughout all ages by views of national expediency entertained by the rulers of the strong ones. The rules that have gained some measure of recognition as international law are a strange combination of those recognizing the right of a nation to commit the major atrocities under the name of war and numerous others designed to mitigate the minor incidents of these atrocities. The fundamental moral law that enjoins love instead of hate in all the relations of life is ignored. Aggressive wars, instituted to further the ambitions of particular groups of men who for the time dominate the political affairs of the nations, are tolerated as evils naturally, if not necessarily, incident to national life. The minor rules relating to the manner of conducting wars have persuasive rather than compelling force, the observance of them being optional with the wrongdoers themselves. The naivete with which the great nations of Europe brush aside treaty obligations and long accepted principles applicable to the conduct of belligerents toward each other and toward neutrals strikingly illustrates international law's lack of sanction. There is no superior force to compel observance of it. In attempts at justification of their barbarities, warring nations base their acts on claimed national necessity, while the real basis is assumed governmental expediency, which is far, very far, from governmental morality. The task of formulating a code of international law worthy the name has not yet been undertaken, but suggestions have been and are being made in many quarters of the need of it and the fundamental principles on which it should be based. Governmental evolution has not yet passed the stage of international anarchy.

When we test by ethical standards the codes of laws obtaining in each of the nations we find that the taint of personal and class expediency corrupts many most essential parts of them. It is only in very recent times that slavery ceased to have the sanction of law in western nations. Personal status was one of the most important topics in the Roman law down to the time of Justinian

and so continued till a new form of mastery was established through a theory of land tenure and feudal dependence. This mastery became hardened into serfdom in Russia and softened into the relation of landlord and tenant in the western nations. The law of slavery is law imposed by the masters in which the slaves have no voice. It is based on views of personal interest entertained by the masters, regardless of the rights of the slaves. Our revolutionary ancestors proclaimed liberty as the priceless political right of all men—except the blacks whom they held as slaves. It appeared to them just cause for a desperate war with the mother country that they were taxed by the British Parliament without being accorded representation in it. The rights of their slaves were negligible.

Feudalism was an outgrowth of turbulent times and a semi-savage state of society. Possession of land was the foundation on which it was constructed. Mastery of more or less of it was established by leaders varying in accordance with their mental and physical strength, their cunning and diplomacy. Feudal law was the creation of the leaders, great and small. Those who actually tilled the soil or performed other productive labor had no considerable influence in its making. Such rights as were accorded to them were based on views of expediency entertained by their lords.

In the land laws of the United States we started with the theory of a vague possessory right in the natives,—a right which took no definite form of title in their minds in the white man's sense of the word,—and of ultimate, absolute title in the state. This title had been claimed by the king of England on the ground that some of his subjects had discovered and settled on certain spots along the sea coast. Our ancestors succeeded to this sovereign claim as a result of their successful war for liberty. The king had made grants to private persons of various tracts, the validity of which was generally recognized, and the states or United States sold or gave away the remainder. The grants so made contemplated no reversion to the

grantor, no feudal services to an overlord, no limitation of time or use. Each grantee became in turn a source of title for all time to come to his part of the earth, independent of all superior authority, save that of the state and nation of which he was an integral part. Under the conditions which have existed in the United States the theories of title to land have accorded well with the customs and sentiments of the people. The public domain, open to settlement by any citizen and acquisition of full title to an ample farm, has appeared to provide for the needs of all in a reasonably satisfactory manner. To get a good farm it has only been necessary to go west and take it. Though great fortunes have been made by speculation in and monopoly of land and passed by inheritance from generation to generation, this right to take public land has been generally regarded as a sufficient answer to all criticisms of our theories of title. Our homestead laws have been highly extolled, but they interpose no serious obstacle to land monopoly. The law protects the homesteader till he gets his patent. He is then free to sell and does sell in a large percentage of instances for less than a reasonable compensation for the time, labor and expense incident to acquiring his title. The homesteader is limited to 160 acres of ordinary farming land, and having used his right and sold his land, can not again resort to the public land for a home. But the buyer may buy without limit, hold as much and as long as he pleases, live on it, cultivate it, or allow it to lie idle as he chooses, and absolutely exclude all other citizens from it except on compliance with whatever terms he sees fit to impose. Homestead exemptions protect against creditors, but not against improvidence or misfortune. Notwithstanding these laws, in 1900 53.5 per cent of all the families in the United States were tenants, without homes of their own, and in the decade following the number was increased 1.3 per cent. What shall be said of the justice or policy of land laws which give absolute dominion over all the land in the settled portions of the country to a steadily decreasing minority, leaving the

majority without any secure foothold on the earth. Under our laws a tenant has no rights beyond those conferred on him by his landlord. He cannot force a landowner to accept him as such tenant on any terms.

Closely connected with and similar in spirit to the land laws are the laws of wills and inheritance by which the monopolist may perpetuate his monopoly after death. By his will he may designate the future owner, not only of his land, but also of all his other possessions. In the absence of a will the law of succession passes it to one or a few persons holding certain designated relations to him by blood or marriage, without much if any regard to the amount or nature of the property, or the needs, disposition or capacity of the beneficiaries. Public sentiment on the subject of inheritances is based on ordinary family conditions and needs. It appears manifestly just that the home, farm, work-shop, store and business of the deceased father, which were used in providing for the needs of his family during his life, should remain their property after his death. If there were some reasonable approximation to equality in the benefits resulting from wills and the descent of property there would be little ground for complaint of the law, but the rule is most gross inequality. It is easy to see the general tendency of these laws and the dangerous situation that will inevitably result from the concentration of title to all the land in a few hands. Democracy will give away to aristocracy and aristocracy to despotism if similar conditions produce results here similar to those that have been produced by them in numberless other countries where similar theories have obtained.

It is self-evident that a home is a prime necessity of every human family just as a nest is for the birds or a hole for the squirrels. A system of laws that fails to allow a homestead to every family, in spite of all land monopolists, is radically defective. Title without regard to use or occupancy is an invention lacking in moral basis and designed to favor the strong and the crafty. The evils of land monopoly on one hand and homelessness on

the other flow largely if not wholly from the following false theories on which land laws are based:

1. Perpetual dominion in an owner regardless of the manifest brevity of his life.

2. Ownership of a part of the enduring earth as a right corresponding to ownership of things made or consumed by man.

3. Title as a right superior to and apart from occupancy or use.

4. Inheritance as a gift from the dead instead of a concession from the living.

5. That a mortal may absorb more of the earth than he ultimately gives back to it.

It is only within very recent times and in a few states that any voice has been given to women in governmental affairs, save that in most monarchical countries a woman may inherit a throne on failure of male heirs. The laws show the effects of their exclusion from legislative councils. Laws which allow a husband to chastise his wife, which give the father the custody of the children in preference to the mother who bore them, which allow the husband to dictate as to all matters of domestic policy, which give the husband the use of all the wife's property and restrict her to a small share of the personal and a life use of one third of the real property after his death, which impose burdensome restrictions and expenses on widows left with dependent children in the settlement and use of the estates acquired by their joint effort or owned by the deceased husband and which impose heavier penalties on women for sexual vices than on men, are all unjust, man-made laws. In rearing offspring and perpetuating the race, women bear at least half the burden and some of them the whole of it. That they are entitled to rights equal with those of men is self-evident.

The most cherished American theory of human relations is that of freedom and equality before the law. In making contracts of all kinds each sane adult stands as the equal of every other sane adult. He may make or

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refuse to make any kind of a lawful bargain. But if his necessities are such that he must needs deal with a monopolist for the sale of his services, the rental of a dwelling or the purchase of necessities, his theoretical equality is a myth. He must accept the monopolist's terms. The policy that requires those who make contracts to guard their own interests without aid from the state seems sound and wholesome and calculated to promote independence and strength of character. The fault of the law lies in its having conferred and preserved the monopoly. There is no freedom of contract unless there is a reasonable approximation to equality of relation to the subject matter of the contract. The disinterested law-maker meets many difficulties in attempting to secure such equality, but there are far greater ones in the way of shielding the weaker members of society from the natural intellectual mastery of the strong and crafty ones. Nature makes leaders and the weak follow and are guided by them. Leadership naturally carries with it personal advantage, unless the leader is an altruist devoted to the welfare of his dependents. In order to apply sound ethics to legislation it is essential that the aspect of the subject from the viewpoint of each party to be affected by it be clearly presented and that the final action be controlled by disinterested persons whose only motive is to do what is right. Even in the most advanced republics legislative bodies are often dominated by the strong and aggressive classes of society.

The autocrat views and decides all questions from a single standpoint, differing radically from that of any of his subjects. The influences surrounding him are usually selfish and misleading. To deny unjust privileges to the strong and aggressive classes often means his own destruction. The educational influences surrounding the heir to a throne magnify the monarch's importance and minimize that of his humble subjects. The moral tone of a body of courtiers cannot be high and is usually very low, because as a class they despise labor and laborers and

live on unmerited favors granted at the public expense. War and intrigue to add power to the monarch by wronging others in order that he may be able to add to their favors and privileges are looked on as the proper fields for their activities. The very constitution of the court of an autocrat is injustice and immorality. His personal motives and impulses may be good, but his power is based on the vicious system through which he rules. This he cannot change without the aid of organized moral forces among his subjects, which must grow under adverse conditions.

There have been few instances of pure aristocracies, but on the other hand most governments are more or less under the influence, and often the complete domination, of an aristocratic element. This element everywhere is made up of persons who have inherited wealth, rank, or power with the addition of an occasional parvenu whose achievements give him prominence. The aristocrat may be one of the best or worst of men, but whatever his personal character his point of view is that of privilege and favoritism. He may be an altruist and a reformer but his interests and the influence of his class will tend to bias him in favor of the laws that give him his position of advantage. Combinations of aristocratic elements have destroyed democratic institutions in unnumbered instances, and their rule has often been followed by that of a military despot to whom the multitude looked for protection from their oppressions.

Autocracies and constitutional monarchies are not wholly exempt from democratic influences and on the other hand no republic is entirely free from aristocratic influences and tendencies. There is in every country a democratic element seeking to promote justice and also an aristocratic element seeking to advance the privileges of the few at the expense of the many, and to gain wealth and power by unjust uses of legislative, executive and judicial functions. Under monarchical governments the democratic influences are usually far removed from the throne

while the aristocratic cluster around it. In republics democratic influences do not necessarily dominate. Aristocratic elements are present in all legislative bodies and constantly exert their influence on legislation. The laws of every republic show unmistakable evidences of the successes they have achieved. The sane and wholesome influences that promote the incorporation of ethical principles into legislation come mainly from persons whose incomes arise from useful activities to which they devote their energies. Sane living induces sound morals. The influence of the aristocratic element in every country may generally be relied on to favor the claims of those who seek wealth without labor and privileges without merit, and of those who for small services ask inordinate compensation. Measured by money values the wrongs, injuries and injustices inflicted by criminal violators of the law in any country classed as civilized are insignificant in comparison with those inflicted with the sanction of the law by those on whom it confers unmerited privileges. As between nations war is chaos, but within each nation the power to force citizens to go to their destruction and to strip their families of the necessities of life for the aggrandizement or glory of the dominant few is exercised by the ruling class under the name of law and rightful authority. The extortions of monopoly in all its manifold forms are enforced and protected by the organized forces of the state in accordance with established laws. The power of taxation, even in the best governed states, is perennially employed to enrich the unworthy at the expense of the multitude. Salaries of officials are increased to correspond with the unearned incomes of the privileged classes without thought of the needs and rights of those who bear the burdens. The bond of sympathy between those who enjoy unmerited advantages seems generally stronger than that between the sufferers. The few with wealth and education can combine for their mutual advantage far more readily than can the great multitude of the poor, ignorant and dependent. The horrible conditions existing

in Mexico are due, in part at least, to the wrongs inflicted by the governing classes on the multitude through forms of laws made by themselves in their own interests. The war in Europe, which for the time stands as a negation of Christianity and civilization, results from the statecraft of rulers seeking personal, political and national advantage at the expense of humanity. The immorality inherent in military governments and an international code which permits war are producing their legitimate fruits.

No complete cure for unjust legislation need be expected, but it is not too early to demand that the legislative bodies of America apply moral tests, not merely to the incidents of their acts but also to the basic principles underlying them. Education must attend general and permanent advancement, but there are many notable instances of the perversion of otherwise admirable educational systems to further aristocratic and despotic ambitions. The castes of India are the products of religious teachings through which the system has been propagated for thousands of years. Mohammedan despotisms draw their support from the teachings of the Koran as inculcated by the political and religious hierarchy. The Czar's hold on the mujiks of his vast empire is largely due to his religious relation to them as head of the Greek Church and the teachings of the priests he appoints. The otherwise excellent educational system of Germany has diligently instilled the poison inherent in militarism into the minds of each rising generation until it has permeated the whole body politic and now feeds the roaring furnaces of war with the strongest and best of its manhood.

The only possible cure for these and similar evils is the subjugation of rulers to law and of law to morality.

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